APPENDIX

Opinion of the Supreme Court of New Jersey

SUPREME COURT OF NEW JERSEY

THEODORUS BRON, *et al.*,
Plaintiffs-Appellants,

vs.

HARRY WEINTRAUB, *et al.*,
Defendants-Respondents.

HUDSON TRADING CORPORATION, *et al.*,
Plaintiffs-Respondents,

vs.

EMILE W. SAULNIER, *et al.*,
Defendants-Appellants.

(Filed April 20, 1964.)

Mr. Robert N. Wilentz argued the cause for appellants (*Messrs. Wilentz, Goldman & Spitzer,* of counsel; *Messrs. Boyd, Dodd, Keer & Booth,* attorneys).

Mrs. Sylvia B. Pressler argued the cause for respondents.

The opinion of the Court was delivered by WEINTRAUB, C. J.

In 1935 the Township of Woodbridge sold certain vacant lands for unpaid taxes and itself was the buyer at the sale. In 1940 it foreclosed the tax sale certificates in the former Court of Chancery. That proceeding ran against Danwil

Developers, Inc., as owner. However, in 1929 that company had conveyed to El-Ka Holding Co., Inc., which in turn conveyed to Harry Weintraub in 1931. Weintraub apparently was the secretary of both corporations. He died intestate in 1933, survived by two sisters who lived in California. The searcher did not pick up the conveyances just mentioned and hence the 1940 foreclosure suit ran only against Danwil Developers, Inc., as we have said.

In 1952 Woodbridge conveyed the lands to a developer who erected homes and sold them for $10,000 to $11,000 each. Ten such parcels are here involved. In 1959 one of the homes was resold and a search in that connection revealed the failure to bar the Weintraub interests. The township was asked to foreclose those interests, and it started a suit to that end. *N.J.S.A.* 54:5-86.1 *et seq.* Judgment was entered fixing November 13, 1959 as the date by which the unknown heirs of Weintraub had to redeem or be barred. At the eleventh hour Hudson Trading Corporation and Frank Altomare redeemed on the basis of deeds obtained from the Weintraub heirs (the deeds ran to Hudson which in turn conveyed a quarter interest to Altomare).

The present actions ensued, the householders seeking to quiet title and Hudson and Altomare demanding possession and mesne profits. Hudson and Altomare conceded the householders were equitably entitled to remove the improvements or to buy the land at its value unaffected by the improvements. The trial court entered a judgment under which the householders would have to pay for the land the sum of $19,555.11, found to be its value as of the time of the deeds to Hudson and Altomare, plus mesne profits of $2,856.91. Hudson had paid the Weintraub heirs but $400. The Appellate Division affirmed and we granted certification. 40 *N. J.* 507 (1963).

The householders urge that Hudson and Altomare be declared constructive trustees and be required to convey title upon payment of the $400 they gave the Weintraub heirs. Alternatively they say the lands should be valued as of a date prior to the date of the deeds to Hudson, and that, whatever date is approved, the lands should be valued without enhancement due to streets, sidewalks, sewers, and curbing. As to the last proposition, it is unclear whether the appraisers had excluded those items in valuing the "unimproved" land.

We need consider only the first proposition, that Hudson and Altomare should receive no more than what they paid the Weintraub heirs, since we are satisfied the householders are entitled to prevail upon it.

Here ten homes were purchased in the *bona fide* belief that title was good. The defect in the 1940 foreclosure was discovered in 1959, some 28 years after the original owners of the vacant land had last paid a penny of taxes. The municipality started a second suit to perfect the title, and in that action it was necessary to advertise as against the Weintraub heirs. In that way Hudson learned of an opportunity to make some money out of the predicament of these householders.

Hudson located Weintraub's sisters in California. Exactly when we do not know, but on November 7, only six days before the date fixed for redemption, one Herbert Harvey wrote to them. His letter opened with a statement that it related to "lots in Middlesex County, New Jersey, in which, according to the record, the late Harry Weintraub had an interest." That the interest was ownership in fee was not disclosed. The letter correctly said the property was sold for taxes in 1935 and a foreclosure action was brought in 1940, but added only that the foreclosure action was deemed "possibly defective." It continued that "you

might claim an interest" and we are writing to inquire whether you "will furnish a voluntary release of your possible claim" for a "courtesy consideration" of $50 "for the release." It adds that "The required instrument, in the form of a quit claim deed, is enclosed." We interpolate that trial counsel for Hudson and Altomare placed on the record:

> "It is Mr. Harvey's practice to take quit-claim deeds. I say that of all the deeds he gets, 90 percent are quit-claim deeds. He knows by law a quit-claim deed is just as good as any other kind of deed."

Mr. Harvey was well informed in that regard, *N.J.S.A.* 46:5-1 *et seq.*, but we assume, as no doubt he did, that the recipient of his letter would likely think only of some claim to be released to the existing holder of title in fee. Indeed the letter said the deed "will have the effect of releasing any claim which you have or may have in the land therein described." Finally the letter noted that "this instrument will serve its purpose only if it reaches us without delay—actually no later than November 13, which seems practically return mail." Appreciation was promised for "your co-operation" and the letter closed "With thanks for your courtesy in the matter."

This letter was palpably deceptive. It was deceptive as to the nature of the outstanding interest. It was deceptive as to identity of the parties on whose behalf it was written. In the latter respect, if no more appeared, it would permit an inference that Harvey led the Weintraub heirs to believe he was acting for the householders, and upon such a finding a constructive trust could be imposed in their favor. *Bell v. Smith*, 159 *Fla.* 817, 32 *So. 2d* 829 (*Sup. Ct.* 1947), annotated 175 *A. L. R.* 700 (1948). The cause, however, was not tried on the theory of fraud, and since we are told there were

further communications with the Weintraub heirs not spread on the record, we should not decide the case on that basis. Nonetheless we refer to the fraudulent nature of this communication as a sample of the kind of thing to be expected if we hold that strangers may exploit these situations.

Let us look at the interests involved and the impact of Hudson's activities upon them.

We are dealing with tax titles. Contrary to early hostility to such titles, the policy today is to support them, thereby to aid municipalities in raising revenue. To that end *N.J.S.A.* 54:5-85 provides:

> "The provisions of this article shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by actions in the Superior Court to the end that marketable titles may thereby be secured."

Everybody knows that taxes must be paid. True, there may be instances in which the individual concerned is unaware of his property interest, but such cases are rare. Usually the owner omits to pay knowing the end result will be a tax sale. It is therefore understandable that the Legislature found it fair to bar the right to redeem by a strict foreclosure, *i.e.*, by a judgment that payment be made by a fixed date, in default of which the right to redeem shall end, rather than by a sale as in the case of the foreclosure of a mortgage. The point we stress is that, whereas with respect to the initial sale for taxes, the statute intends to attract third parties to the opportunity to acquire the property and provide for public notice to that end, *N.J.S.A.* 54:5-25 and 26, there is no like policy to invite the public to participate with respect to the foreclosure of the right to redeem. In *Mitsch v. Owens*, 82 *N. J. Eq.* 404 (*Ch.* 1913),

in holding that an earlier tax statute did not require a foreclosure by sale, Chancellor Walker said (*p.* 406):

> "In my judgment, the law does not intend to make provision that a total stranger may deprive the purchaser at a tax sale of his right to perfect his title, by strict foreclosure, on the one hand, or usurp the owner's right to redeem, by permitting the land to be bought away from him, on the other hand."

Hence the foreclosure process concerns only the holder of the tax sale certificate and the holders of existing interests in the property. Hudson learned of this situation, not because it was the policy of the law to advertise to solicit its interest, but because of the fortuitous circumstance that the foreclosing municipality had not located the Weintraub heirs. If they had been found, they could have been served without the need for publication. *R. R.* 4:4-5. In short, our rules of court called for this public notice solely to reach the holders of existing interests, but Hudson read a communication intended for another and sought to turn that information to its own gain, thereby depriving the householders of a chance to work out their misfortunes with the holders of the outstanding interests upon a basis presumably no more onerous than the basis upon which Hudson acquired those interests.

In attacking the legality of Hudson's activity, the householders appeal to public policy, the ultimate source of justice. Public policy has been described but never quite defined. *Ready v. National State Bank of Newark,* 117 *N. J. L.* 554, 559 (*E. & A.* 1937); *Girard Trust Co. v. Schmitz,* 129 *N. J. Eq.* 444, 456-60 (*Ch.* 1941). The Supreme Court of Ohio said in *Pittsburgh, Cincinnati, Chicago and St. Louis Railway Co. v. Kinney,* 95 *Ohio St.* 64, 68, 115 *N. E.* 505, 506 (1916):

"What is the meaning of 'public policy'? A correct definition, at once concise and comprehensive, of the words 'public policy,' has not yet been formulated by our courts. Indeed, the term is as difficult to define with accuracy as the word 'fraud' or the term 'public welfare.' In substance, it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men, having due regard to all the circumstances of each particular relation and situation.

Sometimes such public policy is declared by Constitution; sometimes by statute; sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people—in their clear consciousness and conviction of what is naturally and inherently just and right between man and man. It regards the primary principles of equity and justice and is sometimes expressed under the title of social and industrial justice, as it is conceived by our body politic. When a course of conduct is cruel or shocking to the average man's conception of justice, such course of conduct must be held to be obviously contrary to public policy, even though such policy has never been so written in the bond, whether it be Constitution, statute, or decree of court. • • • "

Reflecting as it does the common conscience, public policy changes in its demands with the needs and the widely held feelings of the times. *Henningsen v. Bloomfield Motors, Inc.*, 32 *N. J.* 358, 403 (1960). As was said in *Brooks v. Cooper*, 50 *N. J. Eq.* 761, 769 (*E. & A.* 1893):

> "It has been declared that public policy is a variable quality, but the principles to be applied have always remainded unchanged and unchangeable, and public policy is only variable in so far as the habits, capacities and opportunities of the public have become more varied and complex. The relations of society become from time to time more complex; statutes defining and declaring public and private rights multiply rapidly, and public policy often changes as the laws change, and therefore new applications of old principles are required. *Davies v. Davies*, 36 *Ch. Div.* 364.
>
> Whatever tends to injustice or oppression, restraint of liberty, restraint of legal right; whatever tends to the obstruction of justice, a violation of a statute, or the obstruction or perversion of the administration of the law; whatever tends to interfere with or control the administration of the law as to executive, legislative or other official action, whenever embodied in and made the subject of a contract, the contract is against public policy and therefore void and not susceptible of enforcement."

Despite the apparent abstractness of the concept of public policy in its restraint upon individual conduct, there is a large measure of guidance and predictability, for as Professor Corbin points out, men of probity and intelligence can greatly reduce the risk "by an unselfish use of conscience and common sense." 6A *Corbin, Contracts* § 1374, *p.* 6 (1962). His discussion is worth repeating (*p.* 6):

> "There is still another source of 'illegality,' besides statute and judicial decision. That source is the great common background of life from which come both legislation and common law. It is the prevailing practices of the community of people and their notions as to

what makes for the general welfare. Bargains are judged by the folkways and mores of the time. A bargain may be illegal because it is contrary to 'Public Policy,' as that is understood by the judges and administrative officers.

A man of business can not escape feelings of uncertainty if the legality of his bargains is to be determined in this fashion. How can these officials know 'public policy,' a matter as to which there is often such violent disagreement? And how can a layman determine what the officials will decide? Here, again, however, we shall advise that a man of probity and intelligence can avoid excessive risk without materially nullifying his enterprise. In most of his transactions the question of legality does not in fact arise. In most of those in which it does arise, the public policies involved have already been declared by statute or judicial decision. In the number remaining, some of which may be very important indeed, he knows that he will be judged by the practices and opinions of his fellow men, practices and opinions in the midst of which he was born and by which his own mind and conscience have been formed and educated. For a man of probity and intelligence, the risk involved in making a decision and acting on it need not be very great. But 'probity' varies in degree, and intelligence may be lacking. Many men have believed that they were unjustly penalized for action wholly consistent with the public welfare. It is true that lack of probity and a minimum of intelligence may be found in the officials who decide as well as in the man who bargains. That is a risk that we can not wholly avoid, even in a democratic society. The best advice that can be given in this small residuum of cases is that risk of illegality can be avoided only

by leaning over backwards and deciding against one's own interest. The bold and resolute may fight and win; but they should be prepared to take the medicine if they lose."

With respect to the factual pattern before us, no one disputes the right of the holders of existing interests to convey them to third persons if they wish.[1] What is challenged is the legality of the intrusion into the scene by third persons who seek only to further their own interests rather than the interests already on hand. As we have pointed out, the policy of the statute is to support tax titles, a policy which overall is burdened by the conduct before us. The burden upon individuals situated as are the householders in this case is evident enough. These manifest hurts should not be tolerated unless it can be said that some other legitimate interest or advantage is served. We find none. We see no social value or contribution in the activities of Hudson. On the contrary, decent men must sense only revulsion in this traffic in the misfortunes of others.

We are not aware of any precedent precisely in point, although reference could appropriately be made to the established hostility toward so-called "heir-hunting." See *Carey* v. *Thieme*, 2 *N. J. Super.* 458, 466 (*Ch. Div.* 1949); Annotation, 171 *A. L. R.* 351 (1947); note, 7 *Vand. L. Rev.* 104 (1953). In any event, public policy is more than a

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[1] We note that in some jurisdictions there may not be a sale of an interest in lands adversely held by another. See 10 *Am. Jur., Champerty and Maintenance* § 18, *p.* 563. This rule originated in an English statute which antedated the Revolution and which was held not to be effective in our State. The issue was initially left open in *Den* v. *Geiger*, 9 *N. J. L.* 225, 234-35 (*Sup. Ct.* 1827), and later resolved, as we have said, in *Schomp* v. *Schenck*, 40 *N. J. L.* 195, 206 (*Sup. Ct.* 1878). See also *Bouvier* v. *Baltimore & New York Ry.*, 67 *N. J. L.* 281, 291 (*E. & A.* 1902).

mere summation of its past applications. It has been said that "Its virtue and vigor lie in its flexibility of application, and while reported cases furnish guides, they rarely are compelling as precedent." *Fidelity Union Trust Co. v. Reeves*, 96 *N. J. Eq.* 490, 493 (*Ch.* 1924), affirmed o.b. 98 *N. J. Eq.* 412 (*E. & A.* 1925). As Judge Desmond said in *Latham v. Father Divine*, 299 *N. Y.* 22, 27, 85 *N. E.* 2*d* 168, 170 (*Ct. App.* 1949), the applicability of the concept of a constructive trust "is limited only by the inventiveness of men who find new ways to enrich themselves unjustly by grasping what should not belong to them." We have no doubt the common conscience condemns the conduct of Hudson and Altomare as an undue interference with the rights of the householders. Hudson and Altomare having acquired the outstanding title under "circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same." 4 *Pomeroy, Equity Jurisprudence* (5*th ed.* 1941) § 1053, *p.* 119. The householders are equitably entitled to the property upon the payment of the sum of $400 plus simple interest from the date of the payment to the Weintraub heirs.

The judgments are therefore reversed and the matters remanded to the trial court with directions to enter judgments in harmony with this opinion.

Note by petitioner—Of the foregoing Opinion, covering two cases, only the portions dealing with *Hudson* v. *Saulnier* are in point. Petitioner could segregate those portions and omit the rest. Respondents might dispute the allocation. For this reason the whole Opinion has been reproduced here.

Complaint to Quiet Title

(Filed March 6, 1969)

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION—MIDDLESEX COUNTY

Docket No. C 1247-68

THEODORUS BRON and HEILTYI A. BRON, ANGELO A. CIFRODELLA and GLORIA C. CIFRODELLA, JOHN CLARENCE KEITEL and JOAN A. KEITEL, JOHN LAWRENCE LYONS and MARGARET F. LYONS, JOSEPH FRANCIS MORAN and ELEANOR MORAN, RICHARD G. REACH and VIOLA H. REACH, EMILE W. SAULNIER and JEANNETTE C. SAULNIER, FRANCIS J. STRAULINA and VIRGINIA D. STRAULINA, JOHN TYBOROWSKI and STASIA M. TYBOROWSKI, JOHN A. VATICANO and ALICE G. VATICANO,

Plaintiffs,

—VS.—

HERBERT HARVEY and MARY HARVEY, his wife, said MARY being a fictitious name; HUDSON TRADING CORPORATION, a New Jersey corporation; FREDA SOLOMON and JOHN SOLOMON, her husband, said JOHN being a fictitious name; FRANK ALTOMARE and MARY ALTOMARE, his wife, said MARY being a fictitious name,

Defendants.

[COUNTS ONE TO FOUR, SIX, NINE AND TEN OMITTED]

COUNT FIVE

Plaintiffs Joseph Francis Moran and Eleanor Moran, his wife, residing at 69 W. Arthur Place, Iselin, Township of Woodbridge, Middlesex County, State of New Jersey say:

1. On February 11, 1953 Parkway Gardens, Inc., a New Jersey corporation, conveyed to the plaintiffs, Joseph Francis Moran and Eleanor Moran, his wife, the following described lands and premises situate in the Township of Woodbridge, County of Middlesex, State of New Jersey, and being more particularly described as:

> BEGINNING at a point in the northerly side of Arthur Place therein distant 120′ westerly from the intersection thereof with westerly side of Semel Avenue; thence (1) North 8° 43′ 30″ East 100′ thence (2) North 81° 16′ 30″ west 60′ thence (3) South 8° 43′ 30″ West 100′ to the said side of Arthur Place; thence (4) along the same south 81° 16′ 30″ East 60′ to the place of BEGINNING.
>
> BEING also known as Lots 27, 28, 29 Block 486-J on "Map of Lincoln Manor, Iselin, N.J. dated 1925" and filed in the Middlesex County Clerk's Office on March 27, 1925 as Map 1068 File 617.

2. Said deed of conveyance was recorded in the Middlesex County Clerk's Office on February 19, 1953 in Deed Book 1669, Page 55.

3. Said title was also vested by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C754-60, L 6513-60, recorded July 2, 1964 in Book 2463, Page 1085 A etc.

4. Plaintiffs have been in peaceable possession of such lands ever since the recording of such deed and thereafter

have always claimed to own the same, previous claims of the defendants and/or others having been resolved in favor of the plaintiffs as appears by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C-754-60, L-6513-60, recorded July 2, 1964, in Deed Book 2463, page 1085-A, etc.

5. Plaintiffs' title to such lands or to some part thereof are denied or disputed by the defendants who claim to own the same or some part thereof, or some interest therein or to hold some lien or encumbrance thereon.

6. No action is pending to enforce or test the validity of the defendants' title, interest, lien or encumbrance thereon.

COUNT SEVEN

Plaintiffs Emile W. Saulnier and Jeannette C. Saulnier, his wife, residing at 557 Semel Avenue, Iselin, Township of Woodbridge, County of Middlesex, State of New Jersey say:

1. On September 9, 1953 Iselin Oaks, Inc., a corporation of the State of New Jersey, conveyed to the plaintiffs, Emile W. Saulnier and Jeannette C. Saulnier, his wife, the following described lands and premises situate in the Township of Woodbridge, County of Middlesex, State of New Jersey, and being more particularly described as:

> BEGINNING at the intersection of the northerly side of Edward Street with the westerly side of Semel Avenue; thence (1) along the said side of Semel Avenue North 8° 43′ 30″ East 70′ thence (2) North 81° 16′ 30″ West 100′ thence (3) South 8° 43′ 30″ West 70′ to the said side of Edward Street thence (4) along the same south 81° 16′ 30″ East 100′ to the intersection aforesaid at the place of BEGINNING.

BEING also known as Lots 31, 32, 33 and the southerly ½ of Lot 34 in Block 486-G on "Map of Lincoln Manor, Iselin, N.J. dated 1925" and filed in the Middlesex County Clerk's Office on March 27, 1925 as Map 1068 File 617.

2. Said deed of conveyance was recorded in the Middlesex County Clerk's Office on September 9, 1953 in Deed Book 1706, page 4.

3. Said title was also vested by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C754-60, L 6513-60, recorded July 2, 1964 in Book 2463, Page 1085 A etc.

4. Plaintiffs have been in peaceable possession of such lands ever since the recording of such deed and thereafter have always claimed to own the same, previous claims of the defendants and/or others having been resolved in favor of the plaintiffs as appears by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C-754-60, L-6513-60, recorded July 2, 1964, in Deed Book 2463, page 1085-A, etc.

5. Plaintiffs' title to such lands or to some part thereof are denied or disputed by the defendants who claim to own the same or some part thereof, or some interest therein or to hold some lien or encumbrance thereon.

6. No action is pending to enforce or test the validity of the defendants' title, interest, lien or encumbrance thereon.

COUNT EIGHT

Plaintiffs Francis J. Straulina and Virginia D. Straulina, his wife, residing at 73 W. Arthur Place, Iselin, Township of Woodbridge, County of Middlesex, State of New Jersey say:

1. On January 13, 1954 Parkway Gardens, Inc., a New Jersey corporation, conveyed to the plaintiffs Francis J. Straulina and Virginia D. Straulina, his wife, the following described lands and premises situate in the Township of Woodbridge, County of Middlesex, State of New Jersey, and being more particularly described as:

> BEGINNING at a point in the northerly side of Arthur Place therein distant 60′ westerly from the intersection thereof with the westerly side of Semel Avenue; thence (1) North 8° 43′ 30″ East 100′ thence (2) North 81° 16′ 30″ West 60′ thence (3) South 8° 43′ 30″ West to the said side of Arthur Place; thence (4) along the same South 81° 16′ 30″ East 60′ to the place of BEGINNING.
>
> BEING also known as Lot 30 and the westerly 40′ of Lots 31 to 35 inclusive in Block 486-J on "Map of Lincoln Manor, Iselin, N.J. dated 1925" and filed in the Middlesex County Clerk's Office on March 27, 1925 as Map 1068 File 617.

2. Said deed of conveyance was recorded in the Middlesex County Clerk's Office on January 15, 1954 in Deed Book 1728, Page 478.

3. Said title was also vested by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C754-60, L 6513-60, recorded July 2, 1964 in Book 2463, Page 1085 A etc.

4. Plaintiffs have been in peaceable possession of such lands ever since the recording of such deed and thereafter have always claimed to own the same, previous claims of the defendants and/or others having been resolved in favor of the plaintiffs as appears by final judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C-754-60, L-6513-60, recorded July 2, 1964, in Deed Book 2463, page 1085-A, etc.

5. Plaintiffs' title to such lands or to some part thereof are denied or disputed by the defendants who claim to own the same or some part thereof, or some interest therein or to hold some lien or encumbrance thereon.

6. No action is pending to enforce or test the validity of the defendants' title, interest, lien or encumbrance thereon.

Wherefore plaintiffs demand judgment:

(a) That the defendants have no title to, nor interest in, nor encumbrance upon such lands.

(b) That the plaintiffs have a good and valid title to such lands and premises insofar as the claims of the defendants are concerned.

(c) That the mortgage to Herbert Harvey in Mortgage Book 1633, Page 563, in the sum of $2,500 is not a lien on the plaintiffs' premises.

(d) That the mortgage to Herbert Harvey in Mortgage Book 1865, Page 107, re-recorded in Mortgage Book 1870, Page 249, in the sum of $22,500, which mortgage was subsequently assigned to Rockland National Bank, a corporation organized and existing under the laws of the United States, and subsequently assigned to Freda Salomon in Assignment of Mortgage Book 289, Page 56, is not a lien on the subject premises.

(e) That the Clerk of the County of Middlesex be ordered to indicate that the aforesaid mortgages are cancelled.

(f) For costs.

WILENTZ, GOLDMAN & SPITZER
Attorneys for plaintiffs

Answer and Counterclaim

Filed March 11, 1969

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION: MIDDLESEX COUNTY
Docket No. C 1247-68
Civil Action

THEODORUS BRON, *et als.*,

Plaintiff

vs.

HERBERT HARVEY, *et als.*,

Defendants

HERBERT HARVEY, 537 Stevens Road, Morrisville, Pennsylvania 19067, hereinafter "defendant", answers the complaint in the captioned matter as follows:

ANSWER

1. Defendant is without knowledge or information sufficient to form a belief of the truth of the averments of paragraphs 1, 2, 3 and 4 of each of Counts 1 through 10 inclusive of the Complaint, which averments are moreover in part in the nature of legal conclusions or matters to be legally determined. Defendant therefore puts plaintiffs to their proofs of such averments.

2. Defendant admits the averments of paragraphs 5 and 6 of each of Counts 1 through 10 inclusive of the Complaint.

FIRST AFFIRMATIVE DEFENSE

Defendant does not challenge the possession of the premises in question by plaintiffs, but seeks relief against those, including plaintiffs themselves, who question the validity

of defendant's mortgage liens upon the lands occupied by plaintiffs. Earlier mortgages were executed by plaintiffs; defendant claims that those earlier mortgages were a nullity, having been executed by persons who did not own the land and having been procured and defended by frauds committed by the mortgagee of those mortgages against the mortgagors, and defendant will make no claim under his mortgages, assumed held valid, in excess of the claim made upon plaintiffs under the earlier mortgages, and then only if the said earlier mortgages are invalid.

SECOND AFFIRMATIVE DEFENSE

By virtue of the allegations of the First Affirmative Defense hereof, plaintiffs are not the real parties in interest in this action, the effect of which will be solely to test and protect the claim of the procuror and holder of the said earlier mortgages from the consequences of a mistake and fraud committed by the former at the cost in suffering of the plaintiffs and at the cost in money terms of defendant. Defendant proposes to bring into Court the procuror and holder of the aforesaid earlier mortgages to try their claims as against defendant.

THIRD AFFIRMATIVE DEFENSE

The matter of defendant's mortgages, liens or equitable liens upon the lands of this action is, wholly or in part, res judicata in defendant's favor and against the plaintiffs in the present action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs come into court with unclean hands by reason, in part, of their having secured (in the matter of Bron vs. Weintraub) a judgment and determination of the matters before the Supreme Court of New Jersey and before Superior Court of New Jersey affecting the lands of this action

by the untrue, misleading and malicious representations of plaintiff's counsel to the Court.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are guilty of fraud by reason of the fraudulent process by their counsel in the determinations of prior matters set forth in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

The judgments pleaded in the Complaint are illegal and as such unenforceable.

COUNTERCLAIM

Herbert Harvey, residing at 537 Stevens Road, Morrisville, Pennsylvania, by way of counterclaim against plaintiffs, says:

1. Defendant repeats and realleges all of the allegations of the First through Sixth Affirmative Defenses hereof respectively, by virtue whereof he demands dismissal of the Complaint;

2. Because of the foregoing, defendant demands vacation of the judgment entered in this Court against defendant Herbert Harvey in the matter of Hudson Trading Corporation vs. Emil W. Saulnier et ux, Joseph Francis Moran et ux and Francis J. Straulina et ux, Docket No. L 6513-60, those individuals being among the parties to the within action.

WHEREFORE defendant demands vacation of the aforementioned judgment together with costs of suit.

Herbert Harvey
attorney pro se

Opinion of the District Court Denying Summary Judgment

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil No. 482-69

THEODORUS BRON *et alii*,

Plaintiffs,

v.

HERBERT HARVEY *et als.*,

Defendants.

ON MOTION FOR SUMMARY JUDGMENT

Appearances:

WILENTZ, GOLDMAN & SPITZER, Esqs.
By: BARRY D. MAURER, Esq.
Attorneys for plaintiffs.

HERBERT HARVEY
Pro se.

WHIPPLE, District Judge:

Defendant Herbert Harvey seeks to have this court vacate the Amended Final Judgment of the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket Nos. C 754-60 and L-6513-60 (*Bron, et al.* v. *Weintraub, et al.*), entered June 26, 1964. Harvey claims that he was not a party in that action and yet his name appeared among

those who were divested of their property by order of the Superior Court in the above judgment. This relief is sought by way of a motion for summary judgment as to Harvey's three counterclaims raised in the present action. A brief recitation of the complicated factual situation leading up to this latest motion is necessary before I proceed further.

In 1933 one Harry Weintraub died leaving his heirs, Bessie Sachs and Rose King, a number of pieces of property in Middlesex County. Subsequently, the Township of Woodbridge tried to acquire these lands by a judgment of foreclosure. Thinking it had good title, Woodbridge sold by deed these properties to private developers in 1952 and 1953 who, in turn, sold them individually to the various plaintiffs in this action. The plaintiffs built homes thereon and were in quiet possession until one owner, trying to sell his home, discovered that the Weintraub heirs had never been properly barred. The Township of Woodbridge immediately sought to correct the error by fixing the date that the unknown heirs of Weintraub must redeem or be barred. The defendant Harvey, acting through a now defunct corporation, Hudson Trading Corporation, was instrumental in locating the Weintraub heirs and by skillful and misleading negotiation (see *Bron* v. *Weintraub,* 42 N. J. 87, 90-91 (1964)) he obtained quitclaim deeds on all these properties for a token payment. Seeing their predicament the home owners sought quiet title actions (7 properties) and Hudson Trading Corporation sought possession (3 properties). These actions were consolidated in Superior Court on April 5, 1962 (*Bron* v. *Weintraub,* C 754-60, and *Hudson* v. *Saulnier,* L 6513-60). After a stormy legal voyage the State Supreme Court ordered that the home owners should remain in possession and obtain full title by paying to Hudson

Trading Corporation the sum of $400. plus interest. *Bron v. Weintraub,* supra. The Court reasoned that public policy demanded a constructive trust should be imposed upon Hudson Trading Corporation because the defendant's conduct was an undue interference with the rights of the home owners. Harvey's part in this "heir-hunting" masquerade was duly criticized by the Court and there is no doubt in the mind of this Court that he was fully aware of all aspects of these proceedings. In fact, Harvey is only here today because as the principle creditor of Hudson Trading Corporation and subsequent assignee of mortgages which passed through Hudson he had a considerable stake in the outcome of that earlier litigation.

In the present suit Harvey, who has now acquired the interests of the other defendants, seeks to establish that the three properties which are the subject of his counterclaim should be treated differently than the other seven properties because these three were never properly incorporated into the early attempt to foreclose by the Township of Woodbridge, hence the Supreme Court of New Jersey should not have included them in the constructive trust imposed on all of the Weintraub properties and in addition the amended judgment should not have included any mention of Harvey's interest. Specifically, Harvey objects to the inclusion of his name in that Amended Judgment entered on June 24, 1964.

The evidence which this Court has had before it and the record of the prior legal proceedings in state courts indicates that Harvey was certainly a party to all these proceedings, not in the ordinary sense, but definitely in the real sense. The remarks attributed to Judge Kingfield which counsel for the plaintiff cites in the pretrial memorandum affirm this conclusion.

At best throughout these proceedings Harvey has succeeded in confusing all parties including the Court with his endless recitations of fact and opinion. It is difficult to see what benefit Harvey would derive even if this Court were to vacate the judgment in question, since as a mortgagee and assignee of parties to the original suit he could not emerge with any better title to these properties than his mortgagor or assignor. As regards the question of notice, Harvey surely does not attempt to cloak himself in the robes of an innocent and detached third party. If he is making this claim he should be thoroughly chilled, having been stripped of these garments back in 1964 by Chief Justice Weintraub's precedent-setting opinion. *Bron* v. *Harvey*, supra.

In accordance with the foregoing opinion I find that Harvey's legal arguments raised at this juncture do not entitle him to summary judgment, and in addition there are still complicated factual issues whose resolution would be necessary in any event before defendant's motion for summary judgment could be granted. Rule 56(c) Fed.R.Civ.P. See, e.g., *Bolt Associates, Inc.* v. *Alpine Geophysical Associates, Inc.*, 365 F.2d 742 (3d Cir. 1966); *Sarnoff* v. *Ciaglia*, 165 F.2d 167 (3d Cir. 1947).

An appropriate order shall be submitted, consented at least as to form.

LAWRENCE A. WHIPPLE
United States District Judge

Opinion

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil No. 482-69

THEODORUS BRON *et alii*,

Plaintiffs,

v.

HERBERT HARVEY *et als.*,

Defendants.

Appearances:

WILENTZ, GOLDMAN & SPITZER, Esq.
By: BARRY D. MAURER, Esq.
Attorneys for plaintiffs.

HERBERT HARVEY
Pro se.

WHIPPLE, District Judge:

Plaintiffs seek in this action to quiet title to ten parcels of property located in the Township of Woodbridge, New Jersey. All the plaintiffs presently reside on the lands in question. The defendants have held themselves out as mortgagees of these parcels. This case was heard by the Court without a jury and the issue presently before the Court concerns the validity of the mortgages currently

held by defendants Harvey, a resident of Pennsylvania, and Freda Solomon, a resident of New York. The complicated facts of the case have been set forth by this Court in its Opinion dated February 16, 1971 denying Harvey's motion for summary judgment on the counterclaim. An even more extensive statement of the facts is set forth in the New Jersey Supreme Court opinion, *Bron, et al.* v. *Weintraub*, 42 N. J. 87 (1964). It is the result reached in that opinion which gave rise to the present action. I hereby adopt the facts as set forth in those earlier opinions with the addition of the following findings:

1. Defendants Hudson Trading Corp. and Frank and Mary Altomore are no longer parties to this suit, having advised the Court through their attorney that they were giving up all defenses and interest in this litigation.

2. Herbert Harvey's present claim as a mortgagee of all ten properties is based upon a blanket mortgage by Hudson Trading Corp. to Harvey dated August 10, 1956, (Harvey's Exhibit 1) which covered all after acquired property in Middlesex County. That mortgage was recorded on August 13, 1959 in Book 1633 of Mortgages, page 563, Middlesex County, New Jersey.

On July 7, 1962, one month after the Superior Court decision awarding title to Harvey, Hudson Trading Corp. and Altomare, but before judgment had been entered and before an appeal was taken, Hudson Trading Corp. mortgaged to Harvey the ten properties in question. This was in addition to his earlier mortgage. This mortgage was recorded on December 5, 1962 in Book 1865 of Mortgages, page 107, Middlesex County, after the notice of appeal had been filed in the Appellate Division of the Superior Court. On December 28, 1962 this mortgage was assigned to the Rockland National Bank and recorded on January 8, 1962

in Book 258 of Assignments, page 51, Middlesex County, New Jersey, and in July 1966 Rockland National Bank assigned it to Freda Solomon and recorded same on October 24, 1966 in Book 289 of Assignments, page 569, Middlesex County, New Jersey.

4. On April 20, 1964 the New Jersey Supreme Court in *Bron* v. *Weintraub*, supra, held that Hudson Trading Corp. and Altomare held the ten properties in question as constructive trustees for the benefit of the householders (plaintiffs here) from the date of the purchase of the deeds back in 1959.

5. In accordance with the directions of the New Jersey Supreme Court the Superior Court of New Jersey entered an Amended Final Judgment on June 26, 1964. That Court held Hudson Trading Corp. and Altomare to be constructive trustees for the plaintiffs, and that upon the payment of $400. plus interest, said defendants were to execute and deliver to the plaintiffs deeds to the respective properties, and that in the event of failure of the defendants to do this, the judgment would have the same force and effect as if the conveyance had been done by way of a deed. The judgment further provided that upon payment of the said sum, all adverse parties in interest, including Herbert Harvey, were to "have no estate, interest or right in or lien or encumbrances upon said lands and premises or any part thereof described in said Complaint and in this judgment;" and the judgment further provided that as relates to any claims made on behalf of the defendants to the lands in question, that the title to said premises was determined, settled and decreed to be good.

6. The Amended Final Judgment was appealed by Hudson Trading Corp. and Altomare. The New Jersey Su-

preme Court, on its own motion, certified the appeal and affirmed the judgment. Thereafter, Harvey assumed control of the litigation and he filed a petition for a Writ of Certiorari in the United States Supreme Court attacking the Amended Final Judgment. Certiorari was denied on November 15, 1965.

7. On September 10, 1965 Harvey filed a suit in New Jersey Superior Court against three of the present plaintiffs for vacation of the Amended Final Judgment as to their properties. On September 16, 1966 the suit was dismissed.

8. The deposition of Freda Solomon introduced in evidence indicates that she is a business associate of Harvey and that with respect to the assignment of the mortgage from Rockland National Bank to her she relied upon the advice of Harvey.

Conclusions of Law:

1. In accordance with the New Jersey Supreme Court's ruling in *Bron* v. *Weintraub,* supra, I find that Hudson Trading Corp. and Altomore held the ten parcels of property as constructive trustees for the benefit of the present plaintiffs. This trust reached back and attached from the moment they purchased the deeds from the Weintraub heirs.

2. In accordance with the Amended Final Judgment of the Superior Court in *Bron* v. *Weintraub,* I find that Harvey was a party to the New Jersey litigation, had notice of the proceedings, and is bound by the judgment of that Court. In addition, his claims as mortgagee of Hudson and Altomore are rendered futile by the Amended Final Judgment which conveyed full title to the plaintiffs by the payment

of $400. plus interest, and specifically stripped Harvey of all title or interest in these properties. This is the legal effect of the imposition of the constructive trust.

3. The mortgage claim of Solomon will fail for two reasons: first, as an assignee, her claim can be no better than Harvey's, the original assignor. See, *Davenport* v. *O'Connell,* 117 N.J. Eq. 438 (Ch. 1935); *Koppel* v. *Olaf Realty Corp.,* 62 N.J. Super. 103 (App. Div. 1960). Secondly, she took her assignment two years after Harvey's rights as a mortgagee had been adjudicated. In connection with this assignment, I also find that she was relying upon the advice of Harvey and the fact that she took from Rockland National Bank will not suffice to create an arms length transaction of a stranger which she would have this Court recognize.

4. Accordingly, judgment should be entered against defendants Harvey and Solomon and in favor of all the plaintiffs for the relief requested in the Complaint.

5. All other defenses or claims of the defendants not otherwise discussed herein are found to be without merit.

An order in conformity with the foregoing opinion shall be submitted.

LAWRENCE A. WHIPPLE
United States District Judge

Judgment

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 72-1480 and 72-1481

THEODORUS BRON *et alii*

v.

HERBERT HARVEY *et als.*

HERBERT HARVEY, jointly with FREDA SOLOMON,
Appellants in No. 72-1480

FREDA SOLOMON, jointly with HERBERT HARVEY,
Appellants in No. 72-1481

(D. C. Civil Action No. 482-69)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Submitted under 3rd Cir. Rule 12 (6) April 27, 1973

Before VAN DUSEN, ALDISERT and ROSENN,
Circuit Judges.

JUDGMENT ORDER

Having considered all the contentions of appellants,

It is ORDERED AND ADJUDGED that the district court judgment is affirmed, costs to be taxed against appellants.

BY THE COURT:

(Aldisert)
Circuit Judge

Dated: APR 30 1973

ATTEST:

(Thomas E. Quinn)
Clerk

Certified as a true copy and issued in
lieu of a formal mandate in No. 72-1480
only on June 8, 1973.

THOMAS E. QUINN

Test:

Clerk, United States Court of Appeals
for the Third Circuit

Denial of Rehearing

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-1480

THEODORUS BRON, *et al.*

v.

HERBERT HARVEY, *et al.*

HERBERT HARVEY, jointly with Freda Solomon, Appellant.

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, and VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER AND WEIS, Circuit Judges.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

(Aldisert)
Judge

Dated: May 31, 1973.

Chronology

July 2 1931 Deed to Harry Weintraub conveying inter alia the lands of this petition.

Mar. 15 1933 Death of Harry Weintraub, intestate, leaving next of kin his sisters, Bessie Sachs and Rose King.

1953 Deeds Parkway Gardens, Inc. and Iselin Oaks, Inc. to present respondents.

1953 Mortgages made by respondents to Underwood Title and Mortgage Co., each for nearly the full amount of purchase price and duly recorded.

Aug. 10 1956 Blanket mortgage, Hudson Trading Corporation to Herbert Harvey, including after-acquired property in Middlesex County.

Aug. 13 1959 Date of record of mortgage of Aug. 10 1956.

Nov. 28 1959 Date of deed, William King as executor and trustee under the last will and testament of Rose King, deceased, to Hudson Trading Corporation.

Dec. 14 1959 Date of deed, Bessie Sachs and husband to Hudson Trading Corporation.

Dec. 21 1959 Date of record of two last-mentioned deeds.

Dec. 28 1960 Complaint filed, Hudson Trading Corporation and Frank Altomare vs. Saulnier et als, docket # L 6513-60.

Feb. 14 1961 Counterclaim filed in above-mentioned action by Saulnier et als to quiet title.

June 11 1962	Decision of Superior Court in above-mentioned action in favor of Hudson and Altomare.
July 7 1962	Date of mortgage,* Hudson Trading Corporation to Harvey for $22,500. covering inter alia the lands hereof.
Sept. 14 1962	Judgment entered in Superior Court in favor of Hudson and Altomare pursuant to last-mentioned decision.
Dec. 5 1962	Date of record of last-mentioned mortgage.*
Oct. 29 1962	Notice of appeal to Appellate Division of Superior Court of New Jersey by present respondents against Hudson and Altomare.
May 6 1963	Unanimous decision of Appellate Division sustaining trial court.
July 1 1963	Certification by Supreme Court of New Jersey for review of judgment.
Apr. 20 1964	Opinion of Supreme Court of New Jersey reversing trial court.
June 26 1964	Amended Final Judgment of trial court divesting Hudson, Altomare and Harvey in favor of present respondents.
June 1 1965	Application of Hudson and Altomare to Supreme Court of New Jersey to review amended final judgment denied.

* This mortgage was assigned by Herbert Harvey to Rockland National Bank Dec. 28, 1962, recorded January 8, 1963.